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FACEBOOK, INC. and MARK ZUCKERBERG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FACEBOOK, INC. and MARK ZUCKERBERG,

Plaintiffs,

v.

CONNECTU, INC. (formerly known as CONNECTU, LLC), CAMERON WINKLEVOSS, TYLER WINKLEVOSS, DIVYA NARENDRA, PACIFIC NORTHWEST SOFTWARE, INC., WINSTON WILLIAMS, WAYNE CHANG, and DAVID GUCWA AND DOES 1-25,

Defendants.

Case No. 5:07-CV-01389-RS

PLAINTIFFS' RESPONSES TO DEFENDANTS' OBJECTIONS TO PLAINTIFF'S PROPOSED EVIDENCE SUBMITTED IN SUPPORT OF ITS OPPOSITION TO MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Date: July 11, 2007
Time: 9:30 a.m.
Dept.: 4
Judge: Honorable Richard Seeborg

Dockets.Justia.com

Defendants object to the Cooper exhibits 2, 5, 6, 10, 14, 18, 19, 20, and 24-35, generally on the basis of hearsay, foundation, authentication, and relevancy. Defendants' objections are irrelevant at this stage.

In the absence of a evidentiary hearing, a prima facie showing of jurisdictional *fact* is sufficient to establish personal jurisdiction. *Agilent Technologies, Inc. v. Elan Microelectronics Corp.*, No. 04-5385-JW, 2005 U.S. Dist. LEXIS 34305 (N.D. Cal. Nov. 29, 2005) (emphasis added). At this early stage of litigation, a court may consider any jurisdictional fact that "bears circumstantial indicia of reliability." *Bauman v. DaimlerChrysler AG,* No. 04-194-RMW, 2005 U.S. Dist. LEXIS 31929, at *14 (N.D. Cal. Nov. 22, 2005); *Agilent Technologies, Inc.,* 2005 U.S. Dist. LEXIS at *9. In *Agilent*, the Court overruled evidentiary objections to jurisdictional facts that were hearsay or otherwise "not sufficiently supported by accompanying evidence." *Id.* Defendants' heightened requirement of "compentent non-hearsay prima facie evidence" is wrong.

Because Defendants' objections are premature, Plaintiffs respond only generally to each objection. Each of the exhibits, objected to by Defendants, has at least circumstantial indicia of reliability. Many of the hearsay objections deal with documents that are party admissions. FRE 801(d)(2).

- Exhibit 2 is a document produced by Plaintiff Facebook in another related litigation.
- Exhibits 5, 14, 18, 19, 25, and 26 are all documents produced by Defendants ConnectU, David Gucwa, or Pacific Northwest Software, Inc. in this action or in related litigation. Each document bears Bates numbers reflecting such production. These exhibits are not hearsay because they are admissions of a party opponent. F.R.E. 801(d)(2).
- Exhibit 10 documents were produced by third party iMarc in response to a lawful subpoena.
- Exhibits 6, 20, 24, and 27-35 are webpage printouts that bear the the date and site from which they were printed. *See Bauman,* 2005 U.S. Dist. LEXIS 31929 at *17, fn.1.
- Exhibits 27, 30-33, and portions of Exhibit 20 are printouts of webpages from Defendant Pacific Northwest Software's website. These exhibits are not hearsay

because they are admissions of a party opponent. F.R.E. 801(d)(2), *Bauman,* 2005 U.S. Dist. LEXIS 31929 at *17, fn.1.

Accordingly, the Court should overrule Defendants' evidentiary objections.

Dated: July 10, 2007

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/s/
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